



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

U. S. Environmental Protection Agency
Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of External Affairs
1200 6th Avenue (CEC-142)
Seattle, WA 98101

FEB 15 2013

Re: FOIA Request # 2012-00444

Dear FOIA Officer:

Enclosed is a copy of a request for agency records under the Freedom of Information Act (FOIA), 5 USC 552, from Nancy S. Wainwright, Trustees for Alaska, addressed to NOAA's National Marine Fisheries Service (NMFS). The request asks for records related to:

- (1) All NMFS documents concerning NMFS' participation in the Pebble Project Technical Working Groups (*TWGs*) and Steering Committee;
- (2) All communications between NMFS and Northern Dynasty Minerals (*NDM*), (*or any contractor or subcontractors of NDM*) relating to the Pebble Project;
- (3) All communications between NMFS and Pebble Limited Partnership (*PLP*) (*or any contractor or subcontractors of PLP*) relating to the Pebble Project;
- (4) All communications between NMFS and Anglo American, LLC (*or any contractor or subcontractors of Anglo American*) relating to the Pebble Project;
- (5) All communications between NMFS and the State of Alaska (*or any agency of the State of Alaska*) relating to the Pebble Project; and
- (6) All documents reflecting to analysis of the impacts of the Pebble Project on any species regulated by NMFS.

We found 23 documents that are the exclusive or primary concern of the U. S. Environmental Protection Agency. Accordingly, per our governing regulations, 15 CFR § 4, we hereby refer the requester to your agency for further action related to your agency's portion of the documents. You will find a copy of the final letter that was sent on behalf of NMFS.

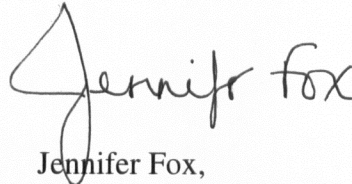
Enclosed are the copies of the transferred documents with this letter on Compact Disk. Be advised eleven documents are provided to you in full. The remaining documents contain partial content in which our agency released NMFS' portions in full. Please respond directly to the requester regarding these documents. We respectfully request you send us a copy of your agency transmittal letter to the following address:



NOAA Fisheries, Alaska Region
Attn: FOIA Specialist
P.O.BOX 21668
Juneau, AK 99802

Thank you for your attention to this matter. Please do not hesitate to call me at (907) 586-7164 should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Fox". The signature is written in a cursive style with a large, stylized "J" and "F".

Jennifer Fox,
FOIA Specialist, Alaska Region

Enclosures

cc: (w/o encl.)
F/MB2 - Justen, Jones
O/FA - NOAA FOIA Office



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

FEB 15 2013

Ms. Nancy S. Wainwright
Trustees for Alaska
1025 West 4th Avenue, Ste. 201
Anchorage, AK 99501

Re: FOIA Request # 2012-00444

Dear Ms. Wainwright:

This letter is in response to your Freedom of Information Act (FOIA) request # 2012-00444, dated July 30, 2012, and received by our office on July 31, 2012. You specifically requested the opportunity to inspect and copy the documents listed below:

- (1) All NMFS documents concerning NMFS' participation in the Pebble Project Technical Working Groups (*TWGs*) and Steering Committee;
- (2) All communications between NMFS and Northern Dynasty Minerals (*NDM*), (or any contractor or subcontractors of *NDM*) relating to the Pebble Project;
- (3) All communications between NMFS and Pebble Limited Partnership (*PLP*) (or any contractor or subcontractors of *PLP*) relating to the Pebble Project;
- (4) All communications between NMFS and Anglo American, LLC (or any contractor or subcontractors of *Anglo American*) relating to the Pebble Project;
- (5) All communications between NMFS and the State of Alaska (or any agency of the *State of Alaska*) relating to the Pebble Project; and
- (6) All documents reflecting to analysis of the impacts of the Pebble Project on any species regulated by NMFS.

This letter completes our response to your request. This search was conducted within the National Marine Fisheries Service, Habitat Conservation Division in Anchorage and Juneau, AK, and located the **540 documents** responsive to your request. Enclosed are indexes of the responsive/non-responsive documents as well as the documents referred to other agencies for release determination. A summary follows:

- **453 documents** are enclosed and released in full.
- **12 documents** are enclosed and released in part pursuant to:
 - 5 U.S.C. § 552 (b)(5) which exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The records are exempted from disclosure through deliberate process privilege, attorney client communication or attorney work product, as appropriate.



- **1 document** is enclosed and released in part pursuant to:
 - 5 U.S.C. § 552 (b)(6) which protects personnel and medical files and similar files about individuals when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. This document contains personal, private information.
- **25 documents** (*containing information non-responsive to the request*) are being released in part with the non-responsive information redacted.
- **5 documents** are withheld in their entirety pursuant to:
 - 5 U.S.C. § 552 (b)(5), which exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The records are exempted from disclosure through deliberate process privilege, attorney client communication or attorney work product;
- **31 documents/portions thereof** that contained information pertaining to this request that are the exclusive or primary concern of another U.S. Federal Agency. Accordingly, per our governing regulations, 15 CFR § 4, we hereby refer to that U.S. Federal Agency for further action related to these documents, as listed below:

<p>U. S. Environmental Protection Agency <i>Regional Freedom of Information Officer</i> <i>U.S. EPA, Region 10</i> <i>Office of External Affairs</i> <i>1200 6th Avenue (CEC-142)</i> <i>Seattle, WA 98101</i> <i>(206) 553-8665 (Telephone)</i> <i>(206) 553-0059 (Fax)</i></p> <p>(portions of 9 documents)</p>	<p>U. S. Fish and Wildlife Service <i>Johnny Hunt, FOIA Contact, Division of</i> <i>Information Resources & Technology</i> <i>Management</i> <i>Arlington Square MS-380</i> <i>4401 North Fairfax Drive</i> <i>Arlington, VA 22203</i> <i>(703) 358-2504 (Telephone)</i> <i>(703) 358-2698 (Fax)</i></p> <p>(portions of 6 documents)</p>
<p>U. S. National Park Service <i>Charis Wilson, NPS FOIA Officer</i> <i>P.O. Box 25287</i> <i>12795 W. Alameda Parkway</i> <i>Denver, CO 80225</i> <i>1-855-NPS-FOIA (677-3642); (303) 969-2959</i> <i>(Telephone)</i> <i>(303) 969-2557 (Fax)</i></p> <p>(portions of 13 documents)</p>	<p>U. S. Army Corps of Engineers <i>Attn: CECC-G</i> <i>Freedom of Information Act Liaison</i> <i>441 G Street, NW,</i> <i>Washington, DC 20314-1000</i> <i>(202) 761-8557 (Telephone)</i> <i>(202) 761- 0270 (Fax)</i></p> <p>(portions of 2 documents)</p>
<p>U. S. Fish and Wildlife Service & U. S. Army Corps of Engineers <i>addresses provided above</i></p> <p>(portions of 1 document)</p>	

- **13 documents** are the exclusive or primary concern of another U.S. Federal Agency. Accordingly, per our governing regulations, 15 CFR § 4, we hereby refer to that U.S. Federal Agency for further action related to these documents, as listed below:

<p>U. S. Environmental Protection Agency <i>Regional Freedom of Information Officer</i> <i>U.S. EPA, Region 10</i> <i>Office of External Affairs</i> <i>1200 6th Avenue (CEC-142)</i> <i>Seattle, WA 98101</i> <i>(206) 553-8665 (Telephone)</i> <i>(206) 553-0059 (Fax)</i></p> <p>(11 documents)</p>	<p>U. S. National Park Service <i>Charis Wilson, NPS FOIA Officer</i> <i>P.O. Box 25287</i> <i>12795 W. Alameda Parkway</i> <i>Denver, CO 80225</i> <i>1-855-NPS-FOIA (677-3642); (303) 969-2959</i> <i>(Telephone)</i> <i>(303) 969-2557 (Fax)</i></p> <p>(1 document)</p>
<p>U. S. Fish and Wildlife Service <i>Johnny Hunt, FOIA Contact, Division of</i> <i>Information Resources & Technology</i> <i>Management</i> <i>Arlington Square MS-380</i> <i>4401 North Fairfax Drive</i> <i>Arlington, VA 22203</i> <i>(703) 358-2504 (Telephone)</i> <i>(703) 358-2698 (Fax)</i></p> <p>(1 document)</p>	

Under 15 C.F.R. § 4.10(a) (2013), you have the right to appeal these partial, non responsive and full denial determinations. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address and send your appeal to the following office:

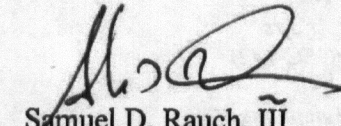
Assistant General Counsel for Administration (Office)
U.S. Department of Commerce
Room 5898-C
14th and Constitution Avenue, NW
Washington, DC 20230

You may also send your appeal by e-mail to **FOIAAppeals@doc.gov** or by facsimile (fax) to **(202) 482-2552**. The appeal must include a copy of the original request, the response to the request, and a statement of the reasons why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete without the required enclosures. The appeal, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA

appeals posted to the e-mail box, or sent to the fax machine, or received by the Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding this request, please contact Ms. Jennifer Fox, Alaska Regional Office, Freedom of Information Specialist, 907-586-7164.

Sincerely,



Samuel D. Rauch, III

Deputy Assistant Administrator
for Regulatory Programs,
performing the functions and duties of the
Assistant Administrator for Fisheries

Enclosures



TRUSTEES FOR ALASKA

SUSTAIN | PROTECT | REPRESENT

1026 W. 4th Ave., Suite 201 Anchorage, AK 99501 (907) 276-4244 (907) 276-7110 Fax
Email: ecolaw@trustees.org; Web address: www.trustees.org

July 30, 2012

SENT VIA EMAIL AND REGULAR MAIL

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Re: Freedom of Information Act Request

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, Trustees for Alaska requests the opportunity to inspect and copy the documents listed below:

- (1) All NMFS documents concerning NMFS' participation in the Pebble Project Technical Working Groups (TWGs) and Steering Committee.
- (2) All communications between NMFS and Northern Dynasty Minerals (NDM), (or any contractor or subcontractors of NDM) relating to the Pebble Project.
- (3) All communications between NMFS and Pebble Limited Partnership (PLP) (or any contractor or subcontractors of PLP) relating to the Pebble Project.
- (4) All communications between NMFS and Anglo American, LLC (or any contractor or subcontractor of Anglo American) relating to the Pebble Project.
- (5) All communications between NMFS and the State of Alaska (or any agency of the State of Alaska) relating to the Pebble Project.
- (6) All documents reflecting to analysis of the impacts of the Pebble Project on any species regulated by NMFS.

For purposes of this FOIA, the following definitions apply:

NMFS means National Marine Fisheries Service, and all employees.

Pebble Project means any aspect of the permitting, exploration, research, analysis or development of the project located in Southwest Alaska in the area of the Pebble deposit or the transportation or potential port associated with development of the Pebble deposit.

Communication means any kind of written, typewritten, or printed material whatsoever, any kind of graphic material, electronic communication and any computer readable media, including, but without limitation, papers, agreements, contracts, notes, memoranda, correspondence, studies, working papers, letters, telegrams, invoices, personal diaries, reports, records, books, forms, indexes, transcriptions and recordings, magnetic tapes, disks and printed cards, data sheets, data processing cards, personal calendars, interoffice memoranda, minutes and records of any sorts of meetings, financial statements, financial calculations, estimates, reports of telephone or other oral conversations, appointment books, maps, drawings, charts, graphs, photographs, raw data, and all other writings and recordings of every kind, however produced or reproduced, whether signed or unsigned.

We request that NMFS respond to this request within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

We also request a waiver of any fees associated with this request. Under FOIA, “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. § 518.19(d). Disclosure of this information is in the public interest. It will contribute significantly to the public’s understanding of NMFS’ operations and activities, and it is not in the commercial interest of Trustees for Alaska.

1. The requested documents will significantly contribute to the public understanding of the operations and activities of NMFS as they relate to the Pebble Project.

There is a clear connection between the requested records and Trustees for Alaska’s interest in and desire to inform the public about NMFS’ activities, communications, and decision-making process related to the Pebble Project. Trustees for Alaska is a non-profit, public interest environmental law firm. Our interest in the documents is related to helping the public to understand the environmental impacts of upland hardrock mining in the Bristol Bay region. With this understanding, the public is enabled to participate in a meaningful discussion of such mining and its implications for the environment and people of the region. Lands in Alaska feature not only the potential for mineral resources, but also an abundance of fish and wildlife resources. As such, it is important that the public have all the information possible in order to make informed decisions about how to utilize *all* of the resources in a manner consistent the public interest. Enhancing public knowledge of the Pebble Project is of broad interest. *See* 32 C.F.R. § 518.19(d)(2)(iv).

These documents are sought for their “informative value,” not their “intrinsic content.” 32 C.F.R. § 518.19(d)(2)(i). The focus of this request is documents that will inform the public about NMFS’ decision-making process and communication with entities and persons associated with the Pebble Project. Accordingly, disclosure of the requested information will contribute significantly to public understanding of NMFS’ process and procedure.

The requested documents will provide meaningful insight into the operations of NMFS. *See* 32 C.F.R. § 518.19(d)(2)(ii). They will also shed light on NMFS’ process for evaluating the Pebble Project and are not duplicative of any information currently available to the public.

2. Trustees for Alaska has the intent and ability to distribute the requested information.

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Trustees for Alaska is a public-interest organization whose core mission involves protecting the quality of the environment, public resources, and human health by, among other mechanisms, monitoring government management of public lands and waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The requested documents will undergo scientific and legal scrutiny by Trustees for Alaska and other interested organizations, and these analyses will form the foundation for providing public comments on the permit application and other related activities.

Trustees for Alaska possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. It is highly qualified to extract, synthesize, analyze, and convey the requested information to the public, including concerned citizens, tribal organizations, and other organizations, and the public at large in a way that will significantly contribute to the general public’s understanding of actions affecting public resources in Alaska. Trustees for Alaska’s staff includes professionals who have direct experience with the Pebble Project. It will use that expertise to analyze and evaluate information about NMFS’ consideration of the Pebble Project.

Trustees for Alaska has a long history of disseminating information similar to the documents requested here, in order to help inform the public and encourage participation in public processes. It will disseminate the information through various means, including direct-mail letters, newsletters, reports, articles, various organizations’ web sites, and through other formal and informal communications. This type of public dissemination is sufficient to warrant a fee waiver. *See* 32 C.F.R. § 518.19(d)(2)(iii).


3. Trustees for Alaska has no commercial interest in the disclosure of the information.

Trustees for Alaska is a nonprofit public interest law firm that has no commercial interest in the requested records. *See* 32 C.F.R. § 518.19(d)(3). The materials discussed above, including the Trustees for Alaska’s publications, website, and comments are freely available to the public at no cost.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 276-4244 x 113 or by email at nwainwright@trustees.org.

Thank you for your prompt attention to this request.

Sincerely,


Nancy S. Wainwright
Staff Attorney